No. 93-1412

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

URSULA LAWRENCE,

Petitioner,

—v.—

COLUMBIA PRESBYTERIAN MEDICAL CENTER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Was the trial court's finding of fact, unanimously affirmed by the Court of Appeals, that Respondent did not retaliate against Petitioner in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a), clearly erroneous?

LIST OF PARTIES

The caption lists all of the parties in the proceedings below. Respondent has no parent companies or subsidiaries within the meaning of Supreme Court Rule 29.1.

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent Columbia Presbyterian Medical Center ("CPMC") opposes the petition filed by Ursula Lawrence ("Lawrence") for a writ of *certiorari* to review the unreported decision of the United States Court of Appeals for the Second Circuit in *Ursula Lawrence v. Columbia Presbyterian Medical Center*, reprinted in the appendix to the petition. (Pet. App. A-1 - A-4)[1]

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1 References to pages in petitioner's appendix are designated as "Pet. App. ____." References to pages in the petition are designated as "Pet. _____."

STATEMENT OF THE CASE

Lawrence seeks review of a unanimous affirmance of the district court's post-trial finding that CPMC, her former employer, did not retaliate against her in violation of Title VII of the Civil Rights Act of 1964.

Lawrence claimed that CPMC discriminated against her on the basis of her religious beliefs by assigning her to staff an operating room in which elective abortions were performed and then subsequently transferring her because of her anti-abortion beliefs. (Pet. 3; Pet. App. A-2) Following a two-day bench trial, the district court found, *inter alia*, that it was CPMC's policy not to assign an employee to participate in elective abortions unless the employee was willing to do so; that the assignment of Lawrence to an operating room in which an elective abortion may have been performed was the result of an inadvertent mistake and was not in any way caused by an intentional disregard of her religious beliefs; and that CPMC quickly rectified the mistake by relieving Lawrence of the assignment. (Pet. App. A-2 - A-3, A-11 - A-15)

Concerning Lawrence's "transfer," the court found that she had "failed completely" to demonstrate that CPMC's reason — her unsatisfactory performance — was pretextual. (Pet. App. A-13) The court concluded: "I find there is no evidence which would permit a reasonable finder of fact to infer here that" the decision "was motivated by bias against the plaintiff [ ] because she was insisting on her civil rights to be free of doing elective abortions. . . . The Court further finds she has not proved her position that this subject played any part whatsoever in the decision making process of the hospital." (Pet. App. A-14 - A-15)

At trial, the court also expressly rejected Lawrence's request that it draw an inference of discrimination based on CPMC's alleged delay in informing Lawrence of the existence of credible witnesses who would substantiate that she was not intentionally discriminated against. The court rejected the inference

because it believed CPMC's witnesses were "truthful." (Pet. App. A-14)

Based on these findings of fact, the court issued a judgment dismissing the complaint. (*See* Pet. App. A-6) Lawrence did not (and still does not) challenge any of these findings. Instead, Lawrence argued in a post-trial motion pursuant to Federal Rules of Civil Procedure 15(b), 59(e) and 54(c) that, accepting the trial court's findings as correct, CPMC's alleged delay in advising her that she had not been discriminated against violated 42 U.S.C. § 2000e-3(a). (*See* Pet. App. A-5 - A-6)

The trial court, in a Memorandum and Order dated December 22, 1992, "denied [the motion] in all respects, except that [Lawrence] is deemed to have amended her complaint to conform to the proof received at trial." (Pet. App. A-6) The court concluded that the requested "relief cannot be granted" because "[t]here has been no proof of any violation of plaintiff's civil rights by the defendant." (*Id.*)

Lawrence appealed only from the December 22, 1992 Memorandum and Order on the grounds (repeated in the petition) that the court should not have rejected her post-trial claim of retaliation (which was based entirely on evidence presented during the trial) without first requiring CPMC to articulate a reason why it allegedly delayed informing Lawrence that she was not subjected to intentional discrimination. (Pet. App. A-2) The United States Court of Appeals for the Second Circuit unanimously affirmed the trial court's order, noting that Lawrence "did not point to any evidence that the delay in informing her that the assignment had been the result of mistake was itself the result of religious discrimination" and that the district court on the record before it was not required to attribute any delay to a discriminatory animus. (Pet. App. A-3) Referring to this Court's decision in *Saint Mary's Honor Center v. Hicks*, 113 S. Ct. 2742 (1993), the Court of Appeals concluded that "[i]n the[se] circumstances, the court

properly denied Lawrence's motion without requiring a response from CPMC." (Pet. App. A-3)

REASONS FOR DENYING THE PETITION

The Petition does not allege that there "are special and important" reasons for granting the writ. *See* Sup. Ct. R. 10.1. In particular, Lawrence does not claim that the decision of the Court of Appeals has created a split among the Circuits or that the decision involves an important question of federal law that should be resolved by this Court. *Id.* Instead, Lawrence merely repeats the fact-dependent argument unanimously rejected by the Court of Appeals that the trial court erred because it rejected her post-trial claim of retaliation without waiting for CPMC to submit a response.[2] (Pet. 5-6) The decisions of the trial court and the Court of Appeals are wholly consistent with the applicable rulings of this Court and do not merit further review. In addition, the legal question submitted in the petition for review is not properly presented by the facts of this case.

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2 In accordance with the admonition in Supreme Court Rule 15.1 that respondents in the Brief in Opposition are required to address misstatements of fact in the petition, CPMC notes that petitioner's assertion that she was not informed "until trial" of the non-discriminatory nature of CPMC's actions (Pet. 4) is incorrect. The Equal Employment Opportunity Commission's notice of determination of no probable cause, which was sent to petitioner and was annexed as an exhibit to her complaint clearly states that CPMC had credible evidence demonstrating she was not discriminated against. That determination states: "The records indicate and witness statements corroborate that Charging Party was not required to be present for any abortion. Witness testimony also corroborates Respondent's position that nurses who oppose abortion are not required to participate in that procedure." It also is significant that petitioner's attorney did not notice any depositions or serve a single interrogatory at any time during the litigation.

I. THE DECISION OF THE COURT OF APPEALS IS CONSISTENT WITH SUPREME COURT PRECEDENT

Notwithstanding the fact that her post-trial motion was based exclusively on the trial record, Lawrence claims that the trial court violated an "established rule of law" (Pet. 5) when it disposed of the motion before requiring CPMC to articulate a legitimate non-discriminatory reason for its alleged delay in informing Lawrence that it had witnesses to demonstrate that she had not been the victim of intentional discrimination. Lawrence's petition is predicated on a misapplication of the governing precedents.

It is by now well-established that the *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), discrimination inquiry, with its shifting burdens of proof and production, "was never intended to be rigid, mechanized, or ritualistic." *Saint Mary's Honor Ctr. v. Hicks*, 113 S. Ct. at 2753 (internal quotation marks omitted) (citations omitted); *United States Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711, 715 (1983). As the Court recently reiterated in *Hicks*, in discrimination cases "the ultimate question [is] discrimination *vel non*." 113 S. Ct. at 2753 (citation omitted). At the conclusion of the two-day trial, "the district court ha[d] before it all the evidence it need[ed] to decide . . . whether the defendant intentionally discriminated against the plaintiff." *Hicks*, 113 S. Ct. at 2753-54 (citation omitted).[3]

And the trial court did decide that issue. Thus, the trial court found that Lawrence had not proved "that this subject

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3 This conclusion is particularly apt here, where petitioner made her claim of retaliation through a post-trial motion pursuant to Fed. R. Civ. P. 15(b). Rule 15(b) motions are limited in purpose; they are not a mechanism to litigate claims *de novo*, to present post-trial evidence, to challenge the trial court's findings of fact, or "to extend the pleadings to introduce issues inferentially suggested by incidental evidence in the record." *Browning Debenture Holders' Comm. v. DASA Corp.*, 560 F.2d 1078, 1086 (2d Cir. 1977).

[abortion] played any part whatsoever in the decision making process of the hospital." (Pet. App. A-15) Having decided the ultimate question of discrimination, based on the totality of the evidence and giving due regard to the credibility of the witnesses, the trial court was not required to await additional submission by CPMC before rendering its decision where, as here, the post-trial motion accepted and was predicated solely on the trial court's factual findings.

II. THE QUESTION SUBMITTED IS NOT PROPERLY PRESENTED FOR REVIEW

Even assuming petitioner is correct that the trial court was required to apply literally the *McDonnell Douglas* inquiry in determining her post-trial motion and that this legal issue otherwise is worthy of review, *certiorari* still should be denied because the legal issue submitted in the petition is not properly presented in this case. The question presented is based on the factual assumption that Lawrence had established a *prima facie* case of retaliation discrimination and therefore the burden of articulating a legitimate non-discriminatory reason had shifted to CPMC. (Pet. 5-6) According to the trial court's undisputed findings of fact, however, Lawrence's factual assumption is incorrect.

As Lawrence acknowledges (Pet. 5), *Grant v. Bethlehem Steel Corp.*, 622 F.2d 43 (2d Cir. 1980), sets forth the requisite elements for a *prima facie* case of retaliation discrimination under Title VII. "[T]he plaintiff must show: first, protected participation or opposition under Title VII known by the alleged retaliator; second, an employment action or actions disadvantaging persons engaged in protected activities; and third, a causal connection between the first two elements, that is, a retaliatory motive playing a part in the adverse employment actions." *Grant*, 622 F.2d at 46.

Lawrence failed to establish in the trial court the requisite causal connection between CPMC's alleged retaliatory act — the failure to inform her she was not discriminated against — and her

alleged "protected participation or opposition." To the contrary, the record evidence compelled the court below to find that Lawrence's opposition to abortion practices played no role whatsoever in CPMC's decision-making processes. (Pet. App. A-15) Although this finding is inherently inconsistent with Lawrence's assertion that she established a *prima facie* case, it was never challenged.[4]

As Lawrence had not made out a *prima facie* case of retaliation discrimination, CPMC properly was not required to articulate a legitimate non-discriminating reason for its alleged delay. *See McDonnell Douglas*, 411 U.S. at 802; *Grant*, 622 F.2d at 46. Accordingly, the legal issue upon which review is sought (*see* Point I, *supra*), which assumes that a *prima facie* case had been established, is not presented in this case and *certiorari* should not be granted.

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4 The Court of Appeals correctly noted that: "Lawrence did not point to any evidence that the delay in informing her that the assignment had been the result of mistake was itself the result of religious discrimination; indeed, her motion stated that the delay was '[f]or reasons unknown.'" (Pet. App. A-3) Lawrence still has not cited anything in the trial record even suggesting that the alleged delay related in any way to her opposition to abortion practices.

CONCLUSION

For these reasons, the petition for a writ of *certiorari* should be denied.

Dated: New York, New York
April 7, 1994

Respectfully submitted,

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